



**BUFFALO
WATERFRONT**
CANALSIDE + OUTER HARBOR

Erie Canal Bicentennial Commemoration Visitor Experience Design Services Request for Proposals

Issued: November 4, 2022

Submission Deadline: December 22, 2022 at 5:00PM EST

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact:	John F. Discolo
Secondary Contact:	Ralph Volcy
Additional Contacts:	Chastity O'Shei (<i>Pre-Proposal Meeting and Interviews only</i>)

All contacts/inquiries shall be made by email to the following address:

ECHDC2025MuseumDesignRFP@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>



**Erie Canal Harbor
Development
Corporation**

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I. INTRODUCTION

The mission of the Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is to revitalize Western New York’s waterfront and restore economic growth to Buffalo based on the region’s legacy of pride, urban significance and natural beauty.

A. Invitation to Submit Proposals

The ECHDC seeks an experience/exhibit design firm to design, fabricate, install and service several indoor and outdoor experiences at Canalside in Buffalo, Erie County, New York. ECHDC seeks proposals from design firms and/or teams (the “Consultant”) for world-class experiences specific to Buffalo and its history with the Erie Canal.

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to ECHDC2025MuseumDesignRFP@esd.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

II. OVERVIEW

A. Background

For more than a decade, the ECHDC has spearheaded projects along Buffalo’s waterfront to help the City and Western New York realize a vision of renewed prosperity. The work ECHDC is doing at Canalside and the Outer Harbor- including newly developed waterfront access, new buildings, public spaces, events and activities where there once were none - are helping to drive the area’s resurgence.

Canalside sits on the historic western terminus of the Erie Canal. In its heyday Buffalo, known as America’s “Gateway to the West”, was one of the world’s greatest business centers, teeming with canal and rail traffic passing from the Atlantic seaboard across the Great Lakes. For much of the 19th century, it was truly an industrious port that bustled with people and goods from all over the world.

The Canalside History Advisory Group (“CHAG”) was formed several years ago to help guide ECHDC on projects and programming in order to ensure the historical relevance of Canalside continues to be woven into the fabric of the site. The group is made up of approximately 15 volunteer members and is chaired by Mike Vogel, an ECHDC Board Member.

The bicentennial of the opening of the Erie Canal will occur in 2025 and, while celebrations will occur across New York State, the CHAG has been tasked with planning a Bicentennial Commemoration at Buffalo's Canalside (the "Project"). Prior to this solicitation, the CHAG developed a vision, mission, and identified key audiences and interpretive themes for the Canalside 2025 bicentennial commemoration, and the ECHDC hired BMC Consulting to assist with managing the overall process.

The ECHDC expects to contract with the Buffalo History Museum to complete research, artifact/object and graphic identification to support the development of the experiences contemplated in this RFP.



B. Canalside Property

Canalside is a 20-acre section of downtown Buffalo bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River; and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets. Canalside's public space ownership is a mix of State and City, while several spaces have been or are currently under private development. The entire area is within the Downtown Pedestrian Transit Mall Special District managed by Buffalo Place, Inc.

Opened to the public in 2008, Canalside is an emerging urban neighborhood which features several fully restored facets of the original Erie Canal Harbor including sections of the Canal, the Commercial Slip, Central Wharf boardwalk, and several historic streets and bridges. A year-round attraction that hosts over one million visitors annually, Canalside boasts hundreds of events, festivals, family activities, attractions, historical and cultural programming, art, food, and tours that capitalize on and showcase the diverse assets and resources of Western New York.

Canalside provides various year-round offerings and experiences throughout its public spaces while offering attractions (seasonal boat tours, outdoor roller rink, ice skating rink, carousel, children's museum, and naval park) surrounded by residences, restaurants, and hotels in mixed-use commercial developments including One Canalside, LECOM Harborcenter, and Heritage Point. Canalside is also adjacent to the KeyBank Center, home to the Buffalo Sabres (NHL) and Buffalo Bandits (NLL).

Parking in the Canalside area is located within parking garages, with a few small surface lots and a number of on-street parking options also available. It can also be accessed via the light rail rapid transit system or by watercraft with nearly 1,000 linear feet of transient docking space.

A Canalside Site Map is found in **Exhibit C**.

Main Canal

The Main Canal is an interpretive landscape of water features and site amenities that matches an early 20th century survey of the Erie Canal west of Main Street. The alignment of the canals, towpaths, streets, and bridges help visitors understand the history and character of the former canal district, the terminus of the Erie Canal and its significance to the City of Buffalo, New York State and the Nation.



The Main Canal is actively programmed year-round with a variety of events, activities, and amenities. In addition to the landside activities, the Canals are home to a number of waterside

vendors and activities including paddle and pedal boats, remote-controlled sailboats, and SUP yoga classes. The Main Canal is transformed into a roller-skating rink in the fall months and is frozen for ice rink activities, including public skating, curling, ice bike rentals, skating classes, and pond hockey during the winter months. Canalside annually hosts over 5,000 roller skaters and over 60,000 ice skaters, ice-bikers, and curlers.

The *Heritage Point* private development (106 Main Street) will be completed in Spring 2024 and the towpath along the southern edge of the canal will be available for activation in 2025.

The *Gateway Building* improvement project will be completed in Spring 2025 and available for activation beginning in 2025. It is expected that the remainder of the *North Aud Block* will be under construction for several years will likely impact (but not close) towpath access along the northern edge of the canal.

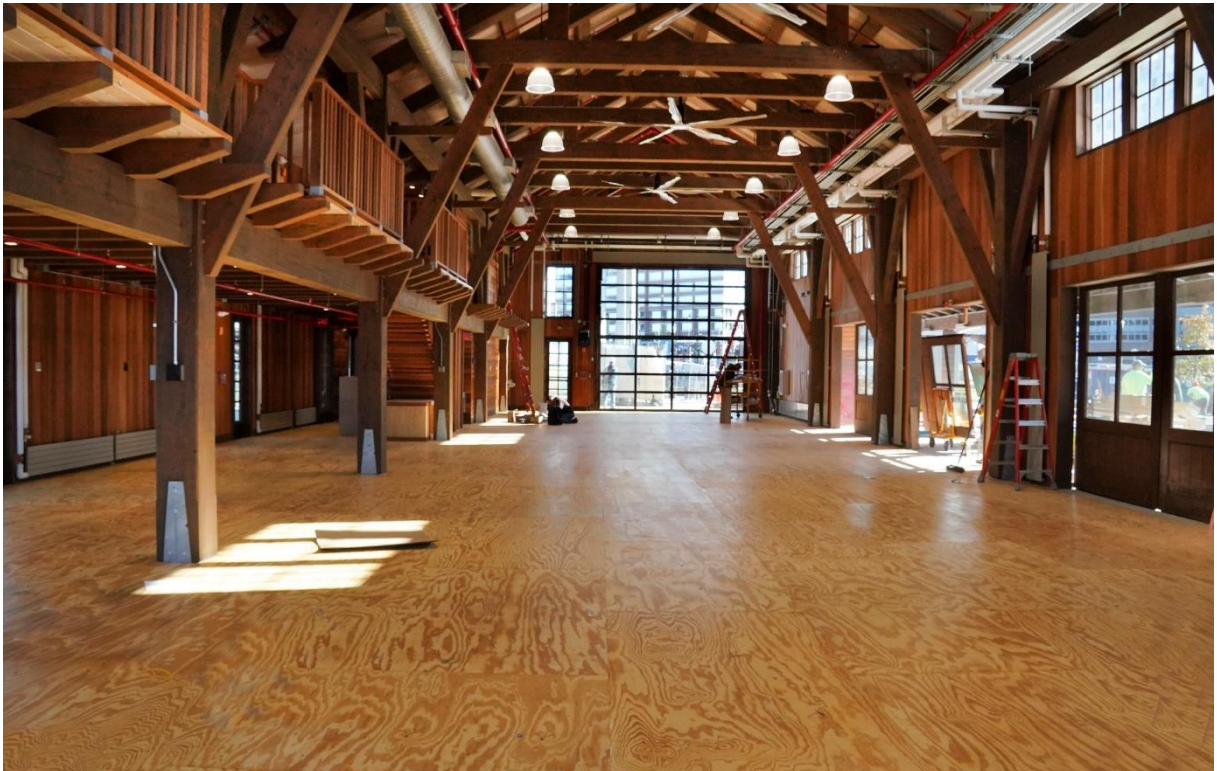
The Ruins

Opened to the public in 2008, the historic brick masonry walls of the former Steamboat Hotel were exposed and preserved as part of an initial interpretive experience. Several outdoor rooms have been created by the walls of the “ruins”. A walking surface of stabilized aggregate concrete and wooden boards is located at the basement level of the building. Access from the ruins to the towpath of the Commercial Slip is provided through several “doorways”. An earthen berm slopes up from the basement level to Lloyd Street, with access via stairs and a handicapped-accessible ramp.



Longshed

This timber-framed structure was opened in 2020 along the southeastern edge of the historic Commercial Slip, where similar two-story buildings stood as early as the 1830s. The new building pays homage to these former canal loading/unloading buildings and provides approximately 4,000 GSF of multi-purpose use space as well as shade and shelter for visitors of Canalside, right along the boardwalk at the historic terminus of the Erie Canal. Located within this gabled-roof structure are public restrooms, a large two-story gathering hall space, mezzanine, storage spaces and mechanical support spaces. The gathering hall includes a 16' x 16' overhead door, opening to the East (Lloyd/Prime St) side, along with sliding door openings on the south side.



Renovations to the area of the first floor under the mezzanine will occur between October 2023 and April 2024. After the renovations, approximately 2,900 GSF will remain in the gathering hall for use in this Project.

The Architect for these renovations will likely be retained for other building modifications as necessary to support the Longshed experience contemplated in this RFP. The Consultant will work with the Architect as necessary.

C. Visitor Experience Plan

The ECHDC, along with the CHAG and BMC Consulting, developed a Visitor Experience Plan for the Erie Canal Bicentennial Commemoration at Canalside. This Plan includes the:

Vision:

We are Buffalo's bustling "city square," reconnecting the community to the Erie Canal's 200-year-old history at its Western Terminus, sparking unending inquiry and discovery into our cultural heritage.

Purpose:

To commemorate Erie Canal's Bicentennial at Canalside in a fun, festive, and participative way to create once-in-a-lifetime memories for the community.

Key Audiences:

- Diverse, multi-generational families from Western and Central NY, Southern Ontario, North Western Pennsylvania, and North Eastern Ohio
- Individuals aged 18-40 years (Gen Y:25-40, and Gen Z: 18-24) from WNY and Ontario
- Cultural travelers and Canal enthusiasts (ex. U.S., Germany, England, Holland, etc.)

The ECHDC aims to share this remarkable story with visitors in a social-recreational context by creating fun, festive, participative, and engaging experiences to help them connect to Buffalo's 200-year-old Erie Canal history and create once-in-a-lifetime memories. Most audiences will likely be familiar with the general history of the Erie Canal and aware that its Western Terminus is in Buffalo. Still, most visitors will not be intimate with Buffalo's storied relationship with it. Consequently, to share the story, the ECHDC envisions providing visitors of all ages, abilities, and backgrounds with multiple pathways and a wide range of experiences to reconnect with a familiar story, engage with new content, and meet visitors where they are in a personal sense.

Visioning sessions were held with the CHAG to envision the nature of the experiences the ECHDC would employ to make the commemoration an entertaining and participative experience for visitors and connect to Buffalo's Erie Canal heritage. Many different types of experiences were shared and discussed during the visioning sessions. However, the following six emerged as the best approaches to help bring the Western Terminus and Buffalo's historic Canal District to life for visitors in 2025:

1. Use of Maps (physical and virtual)
2. Stepping Back in Time
3. Sharing Human/Hidden Histories (development of terminus and Harbor/Canal District)
4. Use of Historical Interpreters (living history)
5. Immersive experience: engaging the five senses
6. Hands-On/Minds-On Experiences

During the final visioning session, each of the six experiences identified above received nearly the same number of support tallies. While each experience is unique on its own, taken as a whole, they support the overriding concept that the experiences allow visitors to "step back

in time.” This message deeply resonated with CHAG members during the visioning sessions, agreeing that the five other experiences supported the “step back in time” concept.

The entire Visitor Experience Plan is found in **Exhibit D**.

D. Visitor Experience Brief

The overall concept is to utilize the Longshed, Ruins, and Main Canal in the following ways to help visitors “step back in time”. Utilizing Canalside in this way will ensure that nearly all of the historically-replicated public space is activated and supports the six experiences identified as most important to CHAG:

1. Longshed (orientation center, multi-media presentation)

The concept for the Longshed is to use the 2,900 GSF gathering hall as the *starting point* for their Bicentennial Commemoration journey, with staff and information available to help orient visitors, while using the majority of the space for an indoor, multi-media experience. Additional, 1,200 GSF semi-conditioned space may be available under an enclosed shed roof along the south side of the Longshed to support queuing, overall site orientation, and/or additional experience elements. The 800 GSF mezzanine could be used for storage and/or support space, but not likely exhibit space, due to the lack of ADA accessibility for guests.



Tentatively, the Longshed visitor experience centers on creating a multi-media presentation that summarizes Buffalo's Erie Canal story using possibly a short film, maps, models, and/or interactive touch screens. The presentation would describe in a compelling and engaging way how Canalside transformed from the traditional territory of the Haudenosaunee to a rural village at the Erie Canal's 1825 opening to a thriving transshipment port at the end of the nineteenth century.

2. Ruins/Main Canal (human history interpretation)

Specifically, the Ruins and Main Canal are envisioned as the area to tell the human and hidden histories of the Canal District. Currently, the Ruins are underutilized in terms of creating additional experiences for visitors to Canalside. A series of wayside interpretive panels from 2008 touch on key interpretive themes around the Commercial Slip and Ruins. The signage has outlived their usefulness, and most importantly, are visually busy and confusing for visitors to read. Consequently, the concept is to start anew and create a series of integrated, engaging, and easily understandable interpretive experiences (ex. 2D & 3D panels, kiosks, multi-media, augmented reality, 3D maps, QR codes, hands-on activities or other) that supplement and strengthen the stories shared in the Longshed.

The interpretive experiences in the Ruins would continue into the Main Canal, allowing visitors to follow a pathway through the site. While the Main Canal is a replica of portions of the Erie Canal, Main & Hamburg Canal and Commercial Slip, there is no signage or interpretive elements along this space. The towpath, bridges, and even the Canal, could be used for more story-telling elements.



Independent of this Project, public art acknowledging the Erie Canal's immigration story will be installed on the steps/towpath near the Gateway Building. The public art project is currently under design, with the selected piece installed by April 2025. This artwork, along with the Gateway Building, should be considered the *ending point* for the Bicentennial Commemoration journey. The Gateway Building's lobby will be staffed and be able to provide further orientation for visitors.

3. Main Canal (evening projection show)

The ECHDC and CHAG envision using the watered canals, towpaths, and surrounding buildings to create a historical projection show accompanied by sound. Both the exterior of the Children's Museum (shown below) and the Gateway Building may be considered for projection. This approach extends and supplements the visitor experiences and stories being told in the Longshed, Ruins, and Main Canal, while adding a unique night-time program.



The entire Visitor Experience Brief is found in **Exhibit E**. Additional history of the canals in this area can be found in **Exhibit F**.

E. Bicentennial Commemoration

The Erie Canal Bicentennial Commemoration at Canalside will occur mainly during the summer of 2025. Canalside will begin the commemoration festivities with the unveiling of a public art piece at the Immigrant Steps in mid-May. The experiences described in Section II.D of the RFP will be open to the public on Thursday, May 22nd and close on Sunday, September 28th. Summerlong outdoor activities and ancillary site programming will begin on Memorial Day Weekend and end on Labor Day Weekend.

Canalside has been selected as the site of the 2025 World Canals Conference, to be held at the site from September 21st – 25th. Canalside also anticipates hosting a three-day Tall Ships Festival in July and four-day Maritime Heritage Conference in August.

The 200th anniversary of the opening of the Erie Canal occurs on Sunday, October 26, 2025. Events and programs are also planned to mark this extraordinary day in Buffalo's history.

III. SCOPE OF WORK

The Buffalo Waterfront aspires to be a world-class, waterfront destination, and holds incredibly high standards for the quality and management of hospitality services, site programming, amenities and the overall brand. All design must conform to the Americans with Disabilities Act Accessibility Guidelines and the Smithsonian Guidelines for Accessible Exhibition Design.

The Consultant will be responsible for all of the tasks and sub-tasks described in this Section of the RFP. ECHDC reserves the right to amend the following scope of work as necessary in order to complete the Project.

Task 1: Project Scoping/Concept Development (20% Design)

- i. The Consultant will be responsible to develop the programming requirements for each of the three experiences.
- ii. The Consultant will be responsible for research/writing/editing in order to supplement Buffalo History Museum staff research and assist in object/graphics selection to illustrate stories. Research may include both primary and secondary sources.
- iii. The Consultant will be responsible for the development of an overall conceptual design, one that articulates each experience while tying them together. Identification of major components and/or microclimates shall be identified; preliminary floorplans, site layouts and space diagrams shall be developed; as should the identification of potential exterior modifications to the Longshed.
- iv. The Consultant will be responsible for an overall visitor pathway diagram that details the journey through the Longshed, Ruins and Main Canal daytime experiences. Touchpoints should include parking, bus/light rail stops, entryways, public street crossings, and exits.
- v. The Consultant will be responsible to estimate the number of visitors expected to attend the three experiences.
- vi. The Consultant will be responsible for the development of a preliminary Budget.
- vii. The Consultant will be responsible to prepare a Schedule for the remainder of the design and installation phases, identifying any long-lead time materials.

Task 2: Design (75% Design)

- i. The Consultant will be responsible to develop the design requirements for each of the three experiences.
- ii. The Consultant will be responsible for sourcing, script writing and/or editing, and to finalize label copy for experience components.
- iii. The Consultant will be responsible for designing all elements of each experience, including the design of standard components, artifact mounts, microclimates and/or artifact security.
- iv. The Consultant will be responsible for building interior and environmental design, lighting, audio/visual and interactive components, fixtures, furniture, and experience-related signage.

- v. The Consultant will be responsible to identify required exterior modifications to the Longshed.
- vi. The Consultant will be responsible to update the budget as the 75% Design Budget.
- vii. The Consultant will be responsible to update the estimated number of visitors.
- viii. The Consultant will be responsible to update the Schedule for the remainder of the design and installation phases.

Task 3: Fabrication/Installation/Training (100% Design)

- i. The Consultant will be responsible to complete the design, fabricate and install all component for each of the three experiences.
- ii. The Consultant shall coordinate all final design work and provide technical support during the fabrication and installation process, including but not limited to, production ready graphic exhibit materials, revisions due to errors and omissions or unavailable materials, and review of shop or fabrication drawings.
- iii. The Consultant will be responsible to purchase, fabricate, assemble and install into the building and on the site all components of the three experiences. The work must be fully coordinated with and adhere to the drawings and specifications developed by the Consultant. The Consultant shall thoroughly test all electrical, electronic, and mechanical devices, including sound and lighting. The Consultant shall install audiovisual equipment, including electrical components to provide and ensure fully operational audiovisual systems and/or interactive components for each exhibit unit. The Consultant shall provide all support documentation for audiovisual and interactive components including schematic and wiring diagrams and manuals.
- iv. The Consultant will prepare Operation and Maintenance Plans for the ongoing operation and maintenance of the experiences and other components constructed and/or installed. The Manuals shall document the materials and products used and describe the methods and products to be used for operation, care, cleaning and maintenance. This shall include a routine of care and cleaning for the life of the exhibit. The operation and maintenance plan and manual shall include all installed components, including all exhibits, lighting, audio visual and interactive components.
- v. The Consultant will provide training which will consist of working with ECHDC and/or BHM staff in a small group workshop to increase the site staff's skills and knowledge of operating, caring for and maintaining the exhibits and other installed components. Training shall follow the format of the exhibit maintenance plan and manual. Provide information on how to maintain climate controls in exhibit cases if necessary. Provide training which will include hands-on demonstrations of how various exhibit components work (including all audio visuals and interactive components), control systems, access for maintenance, use of special tools, equipment or products and methods.

Task 4: Renovation and Maintenance

- i. The Consultant will prepare an Exhibit Renovation and Maintenance Plan to preserve and repair the three experiences which are designated to be continued in summerlong use. Work may include, but is not limited to: replacing exhibit mounts, replacing exhibit components,

refinishing materials, cleaning materials, providing new labels or graphics, doing various repairs, and/or modifying exhibits components to be used in 2026 as part of the US Semiquincentennial celebrations.

IV. SCHEDULE OF DATES

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	November 4, 2022
Pre-Proposal Meeting	November 16, 2022 at 10:30AM EST
Deadline for Submission of Questions	November 23, 2022
Deadline for ESD to Respond to Questions	December 2, 2022
Submission of Proposals (date and time)	December 22, 2022 at 5:00PM EST
Interviews (if necessary)	January 18, 2023
Announcement of Successful Bidder	February 2023 (ECHDC Board Meeting)
Anticipated Contract Start Date	April 1, 2023

A non-mandatory Pre-Proposal Meeting will be held at the Longshed (44 Prime Street, Buffalo NY 14203). This Meeting will include a presentation and overview of the RFP, with staff from ECHDC and BMC Consulting. An additional site tour may be arranged at the request of the Consultant by email request via ECHDC2025MuseumDesignRFP@esd.ny.gov.

Please note, the Corporation reserves the right to change any of the dates stated in this RFP.

V. SELECTION CRITERIA

Every respondent ("Bidder") to this RFP should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

ECHDC reserves the right to make any and all decisions regarding the selection of proposals submitted, as well as the capacity to consider proposals received after the deadline.

General Proposal Requirements

The selected Consultant team should be proficient and have demonstrated experience in projects of a similar nature. In evaluating proposals submitted pursuant to this request; the ECHDC places high value on the following factors, not necessarily in order of importance:

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services;
- Commitment of principals to lead the team and devote time to the project;
- Experience of Consultant and staff being assigned to the project in general, and in particular, providing consulting services to municipalities, economic development agencies, and/or other governmental agencies.
- Quality of work product as demonstrated in submitted work samples of past projects;
- Ability of the prime Consultant to identify sub-consultants with the necessary qualifications for a project of this type.
- Ability of the Consultant to complete projects within schedules and to maintain budget.
- Conformity with or exceeding applicable ECHDC policies noted herein, including specific policies relating to non-discrimination and affirmative action subcontracting goals.
- Cost of services.

Selection Process

Final selection will be based on the Proposal score (100 points total) and the Interview Performance score. The ECHDC reserves the right to:

- Seek clarification and revisions of proposals
- Seek a final and best offer from those firms short-listed.
- Make an award under the RFP in whole or in part.
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements for the solicitation.
- Make revisions to the scope of work after contract award to ensure that the Project is completed.

Selection for interviews will be based on an independent evaluation of the submitted proposals using the factors listed below. Selection for interviews shall be based on "best value", made in accordance with the following evaluation criteria and weights as follows:

- Experience and qualifications of the proposed Consultant team – 25 points;
- Experience and qualifications of the proposed Staff – 20 points;
- Project Plan and Approach – 30 points;
- Cost of Services – 20 points;
- Diversity Practices* – 5 points

It is expected that a maximum of three (3) applicants will be selected, or 'short-listed' for interviews. 'Short-Listed' applicants will be notified by close of business on January 4, 2023. ECHDC reserves the right to forego the interview phase based on the proposal evaluations.

***Diversity Practices**

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using a Diversity Practices Scoring Matrix. Up to 5 points will be awarded based upon the contents of the **Diversity Practices Questionnaire Exhibit B**, submitted by each Respondent to the RFP.

A. Technical Proposal

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

1. Table of Contents
2. Firm Experience and Qualifications
3. Staff Experience and Qualifications
4. Project Plan and Approach
5. Estimated Cost
6. Diversity Practices

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

1. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

2. Firm Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate the following:

- Project experience with multimedia exhibits
- Project experience with outdoor interpretive displays and/or experiences
- Project experience with outdoor projections/shows/3D mapping experiences

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated

ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

3. Staff Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

4. Project Plan / Approach

In this section of the Technical Proposal, Bidders should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- Team's approach to developing three distinct, yet coordinated, experiences that allow the visitor to "step back in time".
- Team's ability to meet the key dates as outlined in **Section II.E**. Team should provide a project schedule by scope of work task as outlined in **Section III**.

5. Estimated Cost

In this section of the Technical Proposal, Bidders should provide an estimated cost for **Task 1: Project Scoping/Concept Development** and **Task 2: Design** only at this time.

Costs for **Task 3: Fabrication/Installation/Training** and **Task 4: Renovation and Maintenance** will be negotiated after the design budget and schedule have been approved.

It is expected that ECHDC will amend the Consultant contract to complete Task 3 and Task 4 of the Project.

6. Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders should provide a completed Diversity Practices Questionnaire (See **Exhibit B**).

B. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

1. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
2. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
3. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
4. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
5. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
6. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
7. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - [OCSD-2 - Staffing Plan](#)
 - [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
8. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), with proposal
9. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
10. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in **Section VIII** of this RFP ("Procurement Forms and Requirements").

Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hardcopies) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email:
ECHDC2025MuseumDesignRFP@esd.ny.gov
2. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email:
ECHDC2025MuseumDesignRFP@esd.ny.gov

Late proposals will not be considered for award.

VI. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the Schedule of Dates to ECHDC2025MuseumDesignRFP@esd.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

VII. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

1. amend, modify or withdraw this RFP;
2. revise any requirement of this RFP;
3. require supplemental statements or information from any responsible party;
4. accept or reject any or all responses hereto;
5. extend the deadline for submission of responses hereto;
6. negotiate potential contract terms with any Bidder;
7. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
8. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
9. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of

experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

Partners, contractors, vendors, suppliers and all other 3rd parties working with ESD or ESD's contracted vendors must comply with ISO Standards 27001, 27005 and 27035 as they relate to the protection of ESD's network, data and information systems. For more information about these and other ISO standards visit <https://www.iso.org>

VIII. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

i. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee,

member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ii. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility

of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company’s trade industry. Per the website, Bidders are to “Select the

questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

iv. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

v. Executive Order 16

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf> and must be signed and included in all Proposals.

vi. Executive Order 177

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

vii. Non-Discrimination and Contractor & Supplier Diversity Requirements
CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [**SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of

recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a MONTHLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby

further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

- A. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy

in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the

Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

viii. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State

businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSES/INCONTRACTPERFORMANCE.pdf>.

ix. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

x. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent’s responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution. (See Exhibit A)

xi. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xii. Insurance Requirements

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits; and
- Professional Liability (Errors and Omissions) of \$5 million.

NYS Urban Development Corporation d/b/a Empire State Development (ESD), Erie Canal Harbor Development Corporation (ECHDC), the Buffalo History Museum, and BMC Consulting must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

xiii. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.